

PARTIES

3. The DNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.

4. Defendant Plymouth Dairy is an Iowa corporation with its principal place of business at 23505 K-49 LeMars, Plymouth County, Iowa.

JURISDICTION

Water Pollution Control Regulations

5. The DNR is the agency of the state responsible for the prevention, abatement, or control of water pollution. Iowa Code § 455B.172 (1). Rulemaking authority for establishing water quality and effluent standards is contained in Iowa Code section 455B.173(2). Rulemaking authority relating to disposal systems is contained in Iowa Code section 455B.173(3).

6. Iowa Code section 455B.186(1) prohibits the dumping, depositing, or discharging of pollutants into any water of the state except adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the DNR.

7. A “water of the state” means “any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.” Iowa Code § 455B.171(36). Plymouth Creek and its tributary streams, watercourses, waterways and drainage systems are each a “water of the state” as defined in Iowa Code section 455B.171(36).

8. Dairy cattle manure waste is a “pollutant” as defined in Iowa Code section 455B.171(18).

9. Surface waters shall be free from floating debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance. 567 Iowa Admin. Code 61.3(2)"b".

10. Surface waters shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to animal life. 567 Iowa Admin. Code 61.3(2)"d".

11. A person who violates any provision of part 1 of division III of Iowa Code chapter 455B or any permit, rule, standard, or order issued under part 1 of division III of chapter 455B shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(1).

12. The Attorney General shall, at the request of the director with approval of the Environmental Protection Commission (hereafter EPC), institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of chapter 455B or any rules promulgated or any provision of any permit issued under part 1 of division III of chapter 455B. Iowa Code § 455B.191(4).

Animal Feeding Operation Regulations

13. Rulemaking authority relating to the construction and operation of animal feeding operations is contained in Iowa Code sections 455B.173(13) and 459.103(1). 567 Iowa Admin. Code 65 contains rules relating to animal feeding operations.

14. A release is an actual, imminent or probable discharge of manure from an animal feeding operation structure to surface water, groundwater, drainage tile line or intake, or to a

designated area resulting from storing, handling, transporting land-applying manure. 567 Iowa Admin. Code 65.1.

15. A confinement feeding operation shall not discharge manure directly into water of the state or into a tile line that discharges into a water of the state. Iowa Code § 459.311(1); 567 Iowa Admin. Code 65.2(3).

16. A confinement feeding operation shall retain all manure produced by the operation between periods of manure disposal. Iowa Code § 459.311(1); 567 Iowa Admin. Code 65.2(3).

17. Manure shall be removed from waste control facilities as necessary to prevent overflow or discharge of manure from the facilities, and manure stored in unformed manure storage structures shall be removed from the structures as necessary to maintain a minimum of two (2) feet of freeboard. 567 Iowa Admin. Code 65.2(3)"b".

18. Any person storing, handling, transporting, or land applying manure from an animal feeding operation who becomes aware of a release must notify the DNR as soon as possible, but not later than six (6) hours after the onset or discovery of the release. 567 Iowa Admin. Code 65.2(9).

19. The owner of a confinement feeding operation, other than a small animal feeding operation, shall submit a manure management plan to the DNR if the confinement feeding operation was constructed or expanded after May 31, 1985, or the owner constructs a manure storage structure. Iowa Code §§ 459.312(1)(a)(1) and (2); 567 Iowa Admin. Code 65.16(1)(b)(1) and (2).

20. The owner of a confinement feeding operation must maintain a current manure management plan and records demonstrating compliance with the plan at the site of the

operation. Iowa Code § 459.312(3); 567 Iowa Admin. Code 65.17(12) and (13). Manure application agreements for all land where manure will be applied must be maintained with the current plan, copies of manure sales forms must be maintained with the owner's records, and nitrogen-based application rates shall be based on the total nitrogen content of the manure. Iowa Code § 459.312(10)(d); 567 Iowa Admin. Code 65.17(8) and (18).

21. The DNR and the Attorney General shall enforce the provisions of chapter 459 in the same manner as provided in chapter 455B, division I unless otherwise provided. Iowa Code § 459.103(3).

22. A person who violates subchapter III of chapter 459 shall be subject to a civil penalty which shall be established, assessed and collected in the same manner as provided in section 455B.191. Iowa Code § 459.603.

FACTS

23. On September 19, 2005, the EPC voted to refer the matters described in paragraphs twenty-four (24) through twenty-nine (29) below to the Attorney General for purposes of initiating judicial enforcement proceedings against Plymouth Dairy.

24. Plymouth Dairy operates a 2,850 head dairy cattle operation located in the SE 1/4 of Section 9, T91N, R45W, Stanton Township, Plymouth County, Iowa. The dairy cattle are housed in four (4) confinement buildings. In addition, the facility consists of a roofed concrete manure/sand slurry separation pit, two (2) earthen manure solids-settling basins (cells 1 and 2), and a larger, earthen manure storage basin. The settling basins have gravity transfer pipes to each other and to the storage basin. Flush water from the storage basin is pumped to the

confinement buildings for manure removal, then through the sand/slurry pit, and then to cells 1 and 2 on a continuous schedule. The facility is approximately 900 feet from an unnamed tributary of Plymouth Creek.

25. On August 3, 2004, DNR officials inspected Plymouth Dairy and observed that freeboard had been exceeded on one of the settling basins.

26. On September 22, 2004, Plymouth Dairy notified DNR officials that a transfer pipe from cell 2 to the storage basin had become plugged, causing cell 2 to overflow. Plymouth Dairy reported that manure flowed from the cell to a field terrace, and then to a farm creek. DNR officials arrived at Plymouth Dairy on September 22 and observed that manure from the cell 2 solids settling structure had flowed around or through the field terrace to a nearby road ditch, and discharged to the unnamed tributary of Plymouth Creek. Downstream of the discharge area liquid in the stream was murky and emitted a strong manure odor. Samples of the stream taken downstream of the discharge showed extremely high levels of Ammonia Nitrogen (22 mg/L) and membrane fecal coliform (430,000 col/100 mL). No fish were observed.

27. On October 12, 2004, DNR officials received an anonymous complaint that the road ditch east of Plymouth Dairy was full of manure. On October 13, 2004 DNR officials investigated the Plymouth Dairy site. They observed that manure was again flowing from cell 2 through or around the field terrace, through the road ditch, and discharging to the unnamed tributary, at a rate of at least 100 gallons per minute. Plymouth Dairy did not report the release. Initially Plymouth Dairy officials claimed to be unaware of the release. The road ditch containing the manure is visible from the facility's driveway. Downstream of the discharge area, the stream again was murky and emitted a strong manure odor. Samples of the stream taken

downstream of the discharge again showed extremely high levels of Ammonia Nitrogen (52 mg/L) and membrane fecal coliform (220,000 col/100 mL). No fish were observed.

28. Plymouth Dairy subsequently advised the DNR that the transfer pipe between cell 2 and the storage basin had again become plugged, and that they had not notified the DNR of the release because they had assumed that the field terrace would contain the manure.

29. On June 14, 2005, DNR officials conducted an inspection of Plymouth Dairy to determine compliance with manure management plan requirements. DNR officials found that the manure management plan was not current because it did not state that manure was being removed from cells 1 and 2 as well as the larger, earthen storage basin as indicated in the original plan. As a result of this omission, the plan did not reflect the actual nitrogen applied. In addition, DNR officers found that Plymouth Dairy had failed to keep records on the amount of manure sold, and failed to maintain manure application agreements for all the land where manure is applied.

VIOLATIONS

Water Pollution Control Violations

30. On or about September 22, 2004, dairy cattle manure discharged from Plymouth Dairy into an unnamed tributary of Plymouth Creek in violation of Iowa Code sections 455B.186(1) and 459.311(1).

31. On or before October 12, 2004, dairy cattle manure discharged from Plymouth Dairy into an unnamed tributary of Plymouth Creek in violation of Iowa Code sections 455B.186(1) and 459.311(1).

32. On or about September 22, 2004, Plymouth Dairy caused exceedance of applicable water quality standards in violation of 567 Iowa Admin. Code 61.3(2)"b" and "d".

33. On or before October 12, 2004, Plymouth Dairy caused exceedance of applicable water quality standards in violation of 567 Iowa Admin. Code 61.3(2)"b" and "d".

Animal Feeding Operation Violations

34. On or about September 22, 2004, Plymouth Dairy failed to retain manure generated at its dairy cattle operation in violation of Iowa Code section 459.311(1) and 567 Iowa Admin. Code 65.2(3).

35. On or before October 12, 2004, Plymouth Dairy failed to retain manure generated at its dairy cattle operation in violation of Iowa Code section 459.311(1) and 567 Iowa Admin. Code 65.2(3).

36. On or before August 3, 2004, Plymouth Dairy failed to maintain a two foot freeboard in one of its solids settling basins (cell 1) in violation of 567 Iowa Admin. Code 65.2(3)"b".

37. On or before September 22, 2004, Plymouth Dairy failed to maintain a two foot freeboard in one of its solids settling basins (cell 2) in violation of 567 Iowa Admin. Code 65.2(3)"b".

38. On or before October 12, 2004, Plymouth Dairy failed to maintain a two foot freeboard in one of its solids settling basins (cell 2) in violation of 567 Iowa Admin. Code 65.2(3)"b".

39. On or before October 12, 2004, Plymouth Dairy failed to notify the DNR of a release of manure from its dairy cattle operation in violation of 567 Iowa Admin. Code 65.2(9).

40. Since on or before June 14, 2005, Plymouth Dairy failed to maintain a current manure management plan which accurately reflected the total nitrogen content of the manure being applied, and failed to keep copies of manure sales forms, and manure application agreements at its facility in violation of Iowa Code section 459.312(3), 459.312(10)(d); 567 Iowa Admin. Code 65.17(8), 65.17(12), 65.17(13), and 65.17(18).

PRAYER FOR RELIEF

WHEREFORE, State of Iowa ex rel., Iowa Department of Natural Resources requests that the Court:

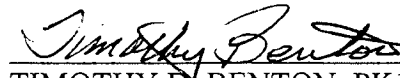
- a. assess a civil penalty against Defendant Plymouth Dairy pursuant to Iowa Code section 455B.191(1) for each day of violation of Iowa Code sections 455B.186(1), 459.311(1), 459.312(3), 459.312(10); 567 Iowa Admin. Code 61.3(2)"b", 61.3(2)"d", 65.2(3), 65.2(3)"b", 65.2(9), 65.17(8), 65.17(12), 65.17(13), 65.17(18), not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation; and
- b. issue a permanent injunction enjoining Defendant Plymouth Dairy from any violation of Iowa Code section 455B.186(1), 459.311(1), 459.312(3), 459.312(10); 567 Iowa Admin. Code 61.3(2)"b", 61.3(2)"d", 65.2(3), 65.2(3)"b", 65.2(9), 65.17(8), 65.17(12), 65.17(13), and 65.17(18).

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

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